

UNITED STATES DISTRICT COURT
Southern District of New York
Honorable Judge ALVIN K. HELLERSTEIN

JOSE LIMA

Plaintiff,

-v.-

NYC Dept. of Education

The City of New York

United Federation of Teachers

Lawrence Becker

Peter Ianiello

Lucille Amerdi

Jeff Huart

Evelyn De Jesus

Wilma Velazquez

Angel Valentin

Defendants

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 1/24/11

Court Case Number:

10 CIV 1044 (AKH)

PRO SE OFFICE

**PLAINTIFF'S RESPONSE IN OPPOSITION OF MOTION TO DISMISS
THE SECOND AMENDED COMPLAINT.**

JOSE LIMA

Plaintiff

2525 Morris Avenue

Apartment C-9

Bronx, New York 10468

lima_rafael@hotmail.com

(646) 452-4545

TABLE OF CONTENT

Enclosed are true and correct copies of the following documents:

- Certificate of Service
- Statement of Facts
- Conclusion

For all of the reasons declared and presented on this Statement of Facts and on the Second Amended Complaint, I respectfully request that this Court proceed with a trial and dismiss the Defendant's Motion to Dismiss the Second Amended Complaint.

Respectfully Submitted,



JOSE LIMA

Plaintiff

Pro Se

2525 Morris Avenue

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Bronx, New York 10468

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(646) 452-4545

Dated: New York State
 January 21, 2011

UNITED STATES DISTRICT COURT
Southern District of New York
Honorable Judge ALVIN K. HELLERSTEIN

JOSE LIMA

Plaintiff.

-v.-

NYC Dept. of Education
The City of New York
United Federation of Teachers
Lawrence Becker
Peter Ianiello
Lucille Amerdi
Jeff Huart
Evelyn De Jesus
Wilma Velazquez
Angel Valentin

Defendants.

CERTIFICATE
OF SERVICE

Court Case Number:
10 CIV 1044
(AKH)

I hereby certify that on this 21 days of January, 2011, via USPS, Certified Mail ,Track Number 7010 1870 0002 5188 7720, I have served a copy of the foregoing PLAINTIFF'S RESPONSE IN OPPOSITION OF MOTION TO DISMISS THE SECOND AMENDED COMPLAINT on the following Court at the address indicated:

- **UNITED STATES DITRICT COURT**
DISTRICT COURT OF NEW YORK
500 PEARL STREET
ROOM 230
NEW YORK, NY 10007.

Also I hereby certify I hereby certify that on this 21 days of January, 2011, via USPS, regular mail, I have served a copy of the foregoing PLAINTIFF'S RESPONSE IN OPPOSITION OF MOTION TO DISMISS THE SECOND AMENDED COMPLAINT on the following persons at the addresses indicated:

- **NYC DEPARTMENT OF EDUCATION**
COURTNEY BETH STEIN
NYC LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL
100 CHURCH STREET, ROOM 2-140
NEW YORK, NY 10007.
- **THE CITY OF NEW YORK**
NYC LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL
100 CHURCH STREET, ROOM 4-313
NEW YORK, NY 10007.
- **UNITED FEDERATION OF TEACHERS**
ARIANA A. GAMBELLA
52 BROADWAY
9TH FLOOR
NEW YORK, NY 10004



Jose Lima

Petitioner
2525 Morris Avenue
Apartment C-9
Bronx, New York 10468
lima_rafael@hotmail.com
(646) 452-4545.

PRELIMINARY STATEMENT

1. I respectfully submit this case and hereby I allege that I have been unlawfully discriminated by the Defendant and the Union.
2. The Defendant terminated based on Problems with Immigration and my immigration status has never lapsed since I was hired by the Defendant to the present.
3. The Defendant placed and maintained in my file an incorrect notation that my employment was terminated because of Immigration Problems, and repeatedly refused to change the notation each time I brought in my valid immigration documents, such as Employment Authorization Card (“EAC”) and Permanent Resident Card as well.
4. The Union never accepted to represent me and or to file a grievance on my behalf and the Defendant removed the Code from my file when they knew that there was a complaint in the U.S. Department of Justice no because the Union filed grievance or because the Union did anything on my behalf. However I could never go back to work because the union stated all time that there is no grievance in terms of immigration problems and I proved the Union that I did not have problems with immigration and since that time to present the Union never helped me to go back to work or filling a grievance.
5. The Union promised me in one occasion that I will go back to work but the Union never did anything on my behalf.

STATEMENT OF FACTS

1. On or around November of 2002, I started the process to teach with the Defendant. On April 14th, 2003 I began working full time for the Defendant as a Mathematics Teacher, at Inwood Intermediate School (I.S. 52), District 6, Region 10. I was license as a Math Teacher through the New York State Department of Education (“NYSEDU”) for the school year 2002-2003.
2. I was hired by the Defendant, base on that I met the requirements to teach Math and I had an Employment Authorization Card (“EAC”), pursuant to my adjustment of status application, valid from June 21th 2002 to February 20th, 2003 and another valid from March 3rd, 2003 to March 2nd, 2004. My adjustment of status was based on an I-130 petition filed on my behalf from wife.
3. On May 28th, 2003 the Defendant applied for a H1B Visa for me. When the Defendant started the process they knew that I have an adjustment of status pending, and the

Defendant mentioned it in the Addendum of the Form-129. Also the Defendant stated, in the same exhibit, intentionally, that I was in exclusion or deportation proceedings, when I never been in that status.

4. I was issued from the U.S. Department of Labor a Certification as Secondary Teacher, I received an approval notice demonstrating that the HIB Visa was valid from August 12th, 2003 to August 3rd, 2006.
5. On June 2006 I was terminated by the Defendant because of Problems with Immigration.
6. By that time the UFT refused to assist me. The UFT just suggested me to find a lawyer or deal with the case by myself, because the UFT does not deal with Immigration issues, but I told and prove to the UFT that I have no issue with USCIS, the real problem was the Defendant that refused to accept my legal status in the US as valid, and anyway the UFT has refused to assist me, since that time to present.
7. I continued contacting the UFT, to see if they can try to help me to convince the Defendant remove the Code, and continually the UFT refused to represent me.
8. On August 17th, 2006 I obtained a Permanent Resident Card and due to that fact, again I went to the UFT, to see if they can try to help me to convince the Defendant remove the Code, and again the UFT refused to help me.
9. On January 24th, 2007 the only a grievant that the UFT allowed to file was a claim based on the days that I worked with the Defendant during the summer of 2006 at I.S. 90, but the UFT stated that they couldn't help with the Immigration Code placed in my file and they could try but they couldn't do so much.
10. Since that time to 2009 and up to present I continued repeatedly the Union refused to assist me in terms of to file a grievance.
11. On June 26th, 2009 I was told by the Defendant that the code was removed from the Defendant system, but however I would never be able to return back to work within the Defendant, and that the best that I can do is to go back to my home country.
12. On A few days later I went to the UFT and I meet with the Manhattan Borough Representative, De Jesus, Pedro and with Huart, and I was told by De Jesus that what the Defendant committed was a wrong job termination and for that reason there is a grievance for and I was promised by De Jesus that by August 2009 I will have my job back, because according with De Jesus the contract states that if the Defendant terminated wrongly I have the right to get my job back immediately and that the UFT will do a grievance and a few

days letter what I received a call from the Union (Huart) stating that I have no problem to work. After that call I went to the UFT and meet with Huart and he stated that the Union won't do anything for me and if I want to start a legal again the Defendant I have the right to do it by my own and if want to start legal action against the UFT I could do it also, but there is not grievance and there won't.

13. On or about July 2009 I filed discrimination complaint in EEOC, based in this last incident occurred with the Defendant.
14. During June, July and August I went to the Union trying to meet with De Jesus, to see if I will be able to go back to work on August, as promised, but nothing happened and I didn't see. Them on a phone conversation De Jesus told me to go to the Union to see her, when I arrived to the building I called De Jesus to ensure that she was there, and she said that she was waiting for me, 2 minutes later when I arrived to the lobby, I asked for De Jesus and the receptionist stated that De Jesus didn't go to work that day. For that reason I met with Velazquez and Valentin. I noticed that Velazquez had an attitude and she didn't even let me talk, and she decided to end the meeting, and left from the conference room. Later on she came back gave me a hand shake and promised to help me wish never happened.
15. For those reasons, on August 19th, 2009 I served a letter to the President of the Union, Mr. Michael Mulgrew, requesting help and also advancing the Union that if they don't help me I will start a legal action against the Union, and the Union didn't even contact me to discuss about my case.
16. On December 17, 2009 during a conference at PERB in presence of the Honorable Judge Philip L. Mailer, the Judge asked to the Department of Education's lawyer that what the reason of my employment termination was: immigration or certification, and Huart who was sitting in the back of the conference room answered certification. That indicates that the Union and its staff are on the side of the Defendant not on my side, because all of the exhibit indicates and proves that I was terminated because of problem with immigration, and the Union knows that, but the Union never has wanted to help me.
17. The Union never to help me to file a grievance:
 - When I was intentional wrongful terminated by the Defendant.
 - To remove the code placed in the Defendant's system.
 - When I was escorted out of the Defendant's carrier job fair.
 - To help me to go back to work.

- When I was told by the Defendant that I won't never be able to go back to work within the Defendant.
- When I told that the best that I can do is to go back to my home country, etc, etc.

18. If the is a grievance I need the Union summit prove of that to this Court, showing the grievance and my signature in that grievance. The only grievance that was filed was based on my salary worked during the summer 2006.

19. I declare under penalty of perjury that the Union never accepted to assist me.

ARGUMENT
POINT I

On the Second Amended Complaint and in this Statement of Facts are the sufficient and plausible true evidence of my claim.

POINT II

The Union stated that they don't deal with immigration issues, and that was the problem I never had no issues with immigration and I proved that to the Union, the Defendant and to this Court. However the Union refused to assist me in the intentional wrongful termination.

When I was promised by De Jesus that I will get my job back it was because that it's stated in the contract and arbitrarily the Union refused to assist me.

If there is not grievance in this case why Ms. De Jesus stated that according to the contract between the Union and the Defendant when a person is wrongfully terminated, by contract that person I placed back to work and that person also receive the unpaid salary during the time that the person was out to the system.

POINT III

- a. This claim was filed within the six months statute of limitations period; because this claim is based on the last incident occurred with the Defendant. This situation stated on 2006, continued during 2007, 2008 and 2009 and the last incident was on June 26, 2009 and the complaint was filed in the EEOC on or about July 2009.

- b. This claim is timely, and all of the actions committed by the Union were totally arbitrary, discriminatory and in bad faith because every time that I went to the Union requesting assistance, I was told in black and white that the Union will not assist me in terms of immigration, and I always proved the Union that I didn't have problem with immigration and however the Union refused to assist me. Also when De Jesus stated that the Defendant was wrong and that the Union will assist me that promise was in vain, because nothing happened.
- 1. The Union's actions were arbitrary because, I repeatedly prove the Union there was no problem with immigration and however the Union refused to file a grievance.

The contract itself states in the Contract in the Article Two: Fair Practices:

ARTICLE TWO FAIR PRACTICES

The Union agrees to maintain its eligibility to represent all teachers by continuing to admit persons to membership without discrimination on the basis of race, creed, color, national origin, sex, marital status, sexual orientation, handicapping condition or age and to represent equally all employees without regard to membership or participation in, or association with the activities of, any employee organization.

The Board agrees to continue its policy of not discriminating against any employee on the basis of race, creed, color, national origin, sex, marital status, sexual orientation, handicapping condition, age or membership or participation in, or association with the activities of, any employee organization.

The Board agrees that it will not require any teacher to complete an oath or affirmation of loyalty unless such requirement is established by law.

The Board of Education agrees that, as a result of the strike and its related activities, it will not dismiss, demote, discipline, or otherwise act against any staff member because of his or her participation in said strike or related activities. Specifically excluded from the foregoing are any and all provisions of the Taylor Law (New York Civil Service Law, Section 200 et seq.), none of which are waived hereby.

Any records of court proceedings or other memoranda relating to job action or strike shall not be put in a staff member's permanent file, except as required by law.

(Copy from the Contract between the Union and the Defendant, Article Two, pg. 4)

2. The Union acted totally in bad faith, because since I was terminated to present I been visiting the Union and all I got from the Union was a No and a vain promise.
When I was promised by De Jesus that I will get my job back it was because that it's stated in the contract and arbitrarily the Union refused to assist me.
3. The Union discriminate against me, because of my legal status in the USA, because if were US citizen by those days that wouldn't happened, cause I was told by the Union that if I would be a citizen and the Defendant terminated me based on problem with immigration they would file a grievance immediately, but on the other hand the Union stated that they don't deal with immigration issues at all.

POINT IV

- a. My claim against the Union was done within the time frame because this Court has the document from the EEOC, indicating that I filed a complaint in the EEOC on 2009, reporting the last incident with the Defendant.
Also as soon as the EEOC issue the determination letter I went to this Court about in the same month to file the complaint.
- b. In response to this point all I can tell that the Union is just looking to excuses or regulation that could make save the Union from this case.
- c. There is a racial discrimination and arbitration case involved in here because all what happened was because I was a simple Dominican with just an employment authorization and latter with a conditional permanent resident card.

POINT V

The Union stated that they prohibit discriminations based on national origin or citizenship status, and that's what they say but that's not what they do, because the Union and their reps, do whatever they want, whenever they want and with whoever they want, and all of their members complaints about that the Union do not help the member. Furthermore if would be possible to work as a teacher within the Defendant without be a Union member, all or most of the teacher would chose not to be a UFT member because we just pay money to the Union, but they never represent the member when they really need it. The Union knows that the members are enrolled because it's necessary not because they want to.

The Union could be called, company, organization or association at the end they result in the same they help whoever they want, and whenever they want, if they want.

POINT VI

This claim does not fail, because I was working for the Defendant which is a City division. Also in this Court for the same reason the Defendant (both Union and Department of Education) have hundreds of cases, open and closed, related to the same issue.

POINT VII

In response to this point those affidavit were signed by 2009 and this case was filed in this Court on 2009 as well.

POINT VIII

There is a complaint filed in the State Court also, and I don't think that it's fear that this Court order to dismiss this case in the State Court, I please request from this Court to proceed with a trial in this court, and allow me to continue in the State Court as well.

CONCLUSION

1. This is a clear case of Document Abuse; Discrimination Based on my Citizenship Status and National Origin and Abuse of Authority committed by the Union.
2. The Union has refused to assist me, at all time, in this case even though the Union recognized that the Defendant's action was illegal.

For all of the reasons presented on this statement, I respectfully request from this Court not to dismiss the Second Amended Complaint. Also I claim justice in this case and that this Court proceeds to a trial and the fair compensation in this case.

I certify that the foregoing statements made by me are true and correct.

Respectfully Submitted,

JOSE LIMA

Plaintiff

Pro Se

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(646) 452-4545

By: 

Jose Lima

Plaintiff

Pro Se

Dated State of New York
January 20, 2011

cc: NYC Department of Education
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January 21, 2011

UNITED STATES DISTRICT COURT
CHAMBER OF HONORABLE JUDGE ALVIN K. HELLERSTEIN
DISTRICT JUDGE
UNITED STATES COURTHOUSE
500 Pearl Street, New York, NY 10007-1302

Re: PLAINTIFF'S RESPONSE IN OPPOSITION OF MOTION TO DISMISS THE
SECOND AMENDED COMPLAINT
10 CIV 1044 (AKH)

Honorable Judge Hellerstein:

Enclosed with this letter, please find copies of the Plaintiff's Response in Opposition of Motion to Dismiss the Second Amended Complaint.

Also I write this letter respectfully to inform you that due to a surgery that I had on December at the North Shore Long Island Forest Hills Hospital, I'm submitting late this response in opposition to dismiss the second amended complaint. The surgery was because of a very big pain that I had which prevented me to do my daily functions and submit my opposition response and after the surgery during the recovery days I was totally unable to take care of myself. For that reason I do apologize for this delay and I please ask you to accept the opposition response at this time.

Ones again I do apologize for this delay, and I hope you accept this response. Thank you very much in advanced for your consideration in this matter.

Respectfully submitted,


Jose Lima